

Slide 12: Benefits of Designation

Here's the one aspect of critical habitat that's most commonly misunderstood by the public.

Designation of critical habitat does not create a park or preserve. It does not establish a zone within which all human activity or economic actions cease.

Critical habitat is aimed chiefly at Federal agencies, or actions under Federal sponsorship, and is intended to help them comply with the Endangered Species Act during their planning and decision-making. The Act is quite specific on this: Federal agencies are required to ensure that the actions they authorize, fund, or carry out are not likely to result in the destruction or adverse modification of critical habitat. You'll find this prohibition in Section 7(a)(2).

Critical habitat designation raises awareness by outlining specific areas deemed essential for the conservation of a species. Critical habitat enhances the conservation of listed species by providing important information about their actual and potential distribution, and where opportunities may exist to work with partners on conservation of those species.

Critical habitat is particularly important for essential areas that may not currently be occupied by a species. For example, if gravel is essential for the successful spawning of the endangered Clearwater sucker, and there is one tributary stream that provides most of that gravel to the main stem of the Clearwater River, we may designate the tributary stream as critical habitat ... even if it does not currently contain Clearwater suckers. Without designation of critical habitat and the outreach and comment opportunities it provides, other Federal agencies may not know that the tributary stream is essential to that species. Because of the designation of critical habitat, an agency would know that the potential impacts of permitting gravel mining in this tributary of the Clearwater would need to be considered and evaluated

Slide 13: Critical Habitat Designation

Let's look at two instances when designation of critical habitat isn't ... critical.

Declaring critical habitat need not occur concurrently with listing, if either agency finds that "it is essential to the conservation of such species that the regulation implementing such determination be promptly published."

In other words, if the species needs to be listed immediately – an emergency – and there's no time to figure out critical habitat, such designation can be deferred.

Similarly, the Act says that if "critical habitat of such species is not then determinable, the Secretary may extend the one-year period ... by not more than one additional year."

That means if we cannot figure out critical habitat because we don't have sufficient information at the time of listing, we can take limited additional time.

Slide 14: Prudent and Determinable

Despite the exceptions we just discussed, the Endangered Species Act states that critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. Pay particular attention to those two adjectives – prudent and determinable.

A “prudency” determination is two-pronged. First, critical habitat should not be expected to increase the degree of threat to the species. For example, butterflies and “showy” plants like orchids risk being collected. Sometimes intentional vandalism or habitat destruction is a risk for species that are especially controversial. Regrettably, people sometimes would rather get rid of a species than conserve it.

Second, critical habitat should be beneficial to the species. There should be some type of regulatory, educational, or public outreach benefit from a critical habitat designation. Critical habitat allows Federal agencies and private landowners to become more aware of the presence of a species and its needs. The likelihood of increased consultation or conservation planning for the species increases. But if factors affecting the habitat are not a threat to the species, there may be little or no benefit to designating critical habitat. That’s a “not prudent” finding.

“Determinable” means that there is sufficient biological information to identify both the elements and the areas essential for the conservation of a species. In many cases, there is inadequate research on life histories and habitat use before listing to make a well-reasoned and legally defensible critical habitat designation. In such a case, critical habitat would be considered “not determinable.”

Slide 15: Examples

Here are a couple of examples:

The rock gnome lichen in four states of the Southeast was a “not prudent” example. Over-collection was a threat to the species. The Fish and Wildlife Service felt that identifying exact locations where this lichen is found, as a critical habitat rule would require, could disturb habitat and promote illegal collection.

When the polar bear was listed as threatened in 2008, the Fish and Wildlife Service felt it did not have sufficient information to identify habitat and the physical and biological features essential for its conservation. Critical habitat was “not determinable.” After listing, agencies and non-Federal scientists and organizations developed climate and sea ice projection models and information on polar bear habitat use. In 2010, a final critical habitat rule was published, greatly enhanced by this post-listing data.

Slide 16: Critical Habitat – Lands

Who is affected by critical habitat? That is also a misunderstood question.

Conservation of critical habitat is very much the responsibility of Federal agencies. In many cases, private landowners are not affected. But in instances when private activities need a Federal license,

permit, or funding, limitations may occur. A Federal agency may need to alter the license, permit, or funding to make sure actions don't diminish critical habitat and its features.

In short:

Activities on Federal land – and all other Federal activities – must be evaluated to determine whether critical habitat may be affected.

And actions on private lands that are within a critical habitat designation are not affected unless Federal activities, including Federal permits, licenses, or funding, occur on those private lands.

For example, say there is private property that's within critical habitat for a species. The land owner wants to develop. Critical habitat would have no effect on the ability of the landowner to develop, unless a Federal permit or funding is required. If such a Federal permit is required, the agency issuing the permit is required to consult with either of our agencies to determine if the activity may affect the designated critical habitat.

Slide 17: It's Exercise Time

Now that we have explored how critical habitat is designated and conserved, it is time to work on some exercises.

When you are ready please go to the next slide to begin Exercise 8. In this exercise you will be given some quiz questions that will allow you to determine how well you absorbed the content on critical habitat.

When you are finished with Exercise 8, you will be prompted to continue on to Exercise 9. In Exercise 9, you will be given scenarios that will include hypothetical areas. You will then recognize if these areas are to be deemed critical for species survival. You will also provide justification of your habitat designation by citing the requirements listed in Section 4 of the ESA of 1973.

Once you are finished with Exercise 9, you will proceed to the conclusion for critical habitat. Good luck!